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No. 07-1254

In the Supreme Court of the United States

GLENN F. STRAUB, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether a district court has authority to punish as criminal contempt the willful violation of an order that the court entered before determining that it lacked jurisdiction in the underlying action.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 508 F.3d 1003. The opinion of the district court (Pet. App. 17-29) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 29, 2007. A petition for rehearing was denied on January 3, 2008 (Pet. App. 30-31). The petition for a writ of certiorari was filed on April 1, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the Southern District of Florida, petitioner was convicted of criminal contempt in violation of 18 U.S.C. 401(3). He was sentenced to 40 hours of com-

munity service. The court of appeals affirmed. Pet. App. 1-16.

1. Petitioner was president of Broward Yachts, Inc. (Broward). Broward provided storage services for the hull of a partially completed yacht owned by Seagrove Trading, Inc. To recover unpaid fees, Broward filed an in rem suit against the hull. In 2003, the district court dismissed the suit for lack of subject matter jurisdiction, on the ground that the hull was not a "vessel" for purposes of maritime jurisdiction. The court of appeals affirmed that dismissal. Pet. App. 2-3; see *Broward Yachts* v. *Vessel Known as Destiny Hull*, 107 Fed. Appx. 183 (11th Cir. 2004) (Table).

In March 2003, while the in rem suit was still pending, the district court issued an arrest warrant for the hull and ordered Broward to release it in exchange for a bond posted by Seagrove. The parties could not agree on the logistical details of removing the hull from Broward's premises, which required the use of a boat-moving vehicle called a Travelift. Following hearings, telephone conferences, and a series of orders clarifying the parties' respective obligations during the transfer, the court issued a detailed order governing the procedures for transferring the hull that specifically prohibited petitioner from being on the premises during the removal:

> ORDERED that Broward shall make the Travelift available to Seagrove's Contractors * * * for use in moving [the hull] from Broward's shed into the water. Seagrove may also use cranes, trucks or other equipment necessary to assist in the removal of the hull, engines, and any of its other property still located on Broward's premises, and Broward shall provide Seagrove's Contractors full access to its premises, including the launching facilities, for such pur-

> poses. Upon placement of [the hull] in the water, Seagrove will be responsible for towing [it] to another location of its choosing. Seagrove will provide Mega Marine [Yacht Service, Inc.] and Broward twenty four hours' written notice of its intent to use the Travelift.
>
> IT IS FURTHER ORDERED that the United States Marshal is hereby directed to use such force as may be necessary to ensure that Seagrove's Contractors have the unobstructed use of the Travelift and have unobstructed access to Broward's premises and the launching facilities as ordered herein until [the hull], the engines, and Seagrove's other property are removed from Broward's premises, and to prevent any party, third party, or other person or entity from interfering with, or otherwise obstructing or preventing the move from taking place when Seagrove's Contractors are mobilized.
>
> . . . .
>
> IT IS FURTHER ORDERED that [petitioner] Mr. Glenn Straub shall not interfere in any manner with the removal of [the hull] and Seagrove's other property, and shall not be present on Broward's premises during the removal.

Pet. App. 3-4; see *id.* at 19-20.

The following day, the district court issued another order clarifying that Broward and Mega Marine—a yacht repair company that owned the Travelift—were required to make the Travelift available on 24 hours' notice and that failure to comply would result in petitioner being held in contempt of court. Pet. App. 20.

On April 18, 2003, workers removed the hull. Four Deputy United States Marshals supervised the removal. Workers moved the hull into the water, tied it to a slip, and then waited for tow boats to take the hull away. During the delay, petitioner arrived at the facility and complained to one of the Deputies that the delay was causing him to lose money. The Deputy read to petitioner the portions of the order that prohibited him from being on the premises during the removal. The Deputy told petitioner that he would be held in contempt if he did not leave the premises and that he could not take his personal belongings with him if he were arrested. Petitioner responded that he was not going to leave, and, at the suggestion of the Deputy, petitioner went inside the Broward building to leave his personal effects. When petitioner came outside, the Deputy again asked him to leave, but petitioner refused, claiming that he was already under arrest. The Deputy clarified that petitioner was not yet under arrest and that he could avoid arrest if he waited in the parking lot. Petitioner again refused to leave, and the Deputy arrested him. Pet. App. 4-5, 20-22.

2. Following a bench trial before a magistrate judge, petitioner was convicted of criminal contempt, in violation of 18 U.S.C. 401(3). The district court affirmed petitioner's conviction. Pet. App. 17-29.

3. The court of appeals also affirmed. Pet. App. 1-16. The court considered sua sponte whether the district court had authority to punish as criminal contempt the willful violation of an order entered in a suit that was ultimately dismissed for lack of jurisdiction. Relying on *Willy* v. *Coastal Corp.*, 503 U.S. 131 (1992), the court of appeals concluded that the district court did have that authority. In *Willy*, this Court held that a district court

has the authority to impose sanctions under Federal Rule of Civil Procedure 11 for conduct during a proceeding over which the court lacked subject matter jurisdiction. Pet. App. 7-8. The court of appeals concluded that *Willy*'s reasoning applied equally to criminal contempt. First, the court observed that, "as with Rule 11 sanctions, the adjudication of a charge of criminal contempt does not require an assessment of the legal merits of the underlying controversy, so the court that hears the criminal contempt charge does not adjudicate a controversy over which it lacks jurisdiction." *Id.* at 8. Second, the court noted that, again as with Rule 11 sanctions, "a sanction for criminal contempt is punitive and aims to vindicate the authority of the court." *Id.* at 8-9. The court of appeals contrasted a court's interest in criminal contempt—which serves the court's ongoing interest in "parties' obedience to its authority," *id.* at 8—with the purpose of civil contempt, which "is remedial and aims to force compliance with an order of the court," *id.* at 9, and thus "disappear[s] if the court lacks subject matter jurisdiction," *id.* at 8.

The court of appeals concluded that this Court's decisions in *Ex parte Fisk*, 113 U.S. 713 (1885), and *In re Green*, 369 U.S. 689 (1962), were inapposite. The court noted that in *Fisk*, there was no question as to subject matter jurisdiction over the underlying suit; rather, the sanctions in that case were invalid because a federal statute prohibited the district court from issuing the specific order whose violation led to the sanctions. Pet. App. 9. And the court explained that *Green* held that a state court had violated a defendant's due process rights by holding him in contempt of an order without holding a hearing to determine whether the order was preempted by federal law. *Id.* at 10. The court of appeals

concluded that neither case was analogous to petitioner's case, because here the district court issued an order that was otherwise valid except that the court later determined that it lacked jurisdiction over the underlying controversy. *Ibid.*

The court of appeals also rejected petitioner's challenges to the sufficiency of the evidence to support his conviction. Pet. App. 11-16.*

ARGUMENT

Petitioner contends that the district court lacked authority to punish him for criminal contempt for his willful violation of a court order because it was ultimately determined that the court lacked jurisdiction over the suit in which it issued the order. The court of appeals' decision is correct, and further review is not warranted.

1. As petitioner acknowledges (Pet. 6-7), this Court has long maintained that a court may impose criminal contempt sanctions for violation of an order issued before it was determined that the court lacked jurisdiction over the case. See *United States* v. *United Mine Workers*, 330 U.S. 258, 290-293 (1947); see also *United States* v. *Shipp*, 203 U.S. 563, 573 (1906). This Court reaffirmed that principle in *Willy* v. *Coastal Corp.*, 503 U.S. 131 (1992). In *Willy*, the Court held that a district court has authority to impose Rule 11 sanctions for misconduct in a case where the appellate court later ruled that the district court lacked subject matter jurisdiction. See *id.* at 132. In so holding, the Court cited with approval its conclusion in *United Mine Workers* that a court could impose criminal contempt sanctions even if it lacked jurisdiction over the underlying action, reasoning that

* Petitioner does not renew those challenges in this Court.

the "same concern" expressed in *United Mine Workers* —"the maintenance of orderly procedure, even in the wake of a jurisdiction ruling later found to be mistaken" —justified upholding the Rule 11 sanctions. *Id.* at 137.

The Court in *Willy* set forth two rationales supporting a district court's authority to impose sanctions even when the court is later found to lack jurisdiction in the underlying action. First, the Court noted that Rule 11 sanctions are "collateral to the merits" and therefore do not "raise the issue of a district court adjudicating the merits of a 'case or controversy' over which it lacks jurisdiction." *Willy*, 503 U.S. at 137-138. Second, a court's purpose in imposing Rule 11 sanctions—to punish a party and promote respect for the court's authority—"does not disappear upon a subsequent determination that the court was without subject-matter jurisdiction." *Id.* at 139. That continuing purpose, the Court noted, stands in contrast with the interest underlying civil contempt—to force compliance with a court's decree—which dissipates if the court lacks jurisdiction. *Id.* at 138-139.

As the court of appeals observed (Pet. App. 7-9), because Rule 11 and criminal contempt sanctions share essentially the same purpose, the two *Willy* rationales apply with equal force to criminal contempt. First, a criminal contempt proceeding is collateral to and separate from the underlying suit. See *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418, 444-445 (1911) (civil contempt is "a part of the main cause" between "the original parties," while criminal contempt is between "the public and the defendant, and [is] not a part of the original cause"). Second, like Rule 11 sanctions, the purpose of criminal contempt is to punish the violator and to vindicate the court's authority. *Id.* at 441. Thus,

given the essential similarity between Rule 11 sanctions and criminal contempt, the court of appeals correctly held (Pet. App. 10) that this Court's decision in *Willy* controls the outcome in this case.

2. Petitioner seeks to avoid that conclusion by contending (Pet. 7-9) that a court may only punish violations of an order that was necessary to maintain the status quo while the court determined whether it had jurisdiction and that the order petitioner violated was not necessary in that sense. That contention is without merit.

a. Contrary to petitioner's suggestion, this Court's precedents do not limit the contempt authority of a court (in cases in which the court ultimately lacks jurisdiction) to violations of orders necessary to maintain the status quo. Although this Court in *United Mine Workers* and *Shipp* reasoned that the need to protect a court's authority to issue orders "preserv[ing] the existing conditions and the subject of the petition," see *United Mine Workers*, 330 U.S. at 292, was among the rationales underlying a court's criminal contempt power in that context, the Court in *United Mine Workers* suggested that, until a court definitively rules that it lacks jurisdiction, a willful violation of any of its orders may validly be punished through criminal contempt. See *id.* at 294-295 (The court's orders "outstanding or issued after [the court assumed jurisdiction] were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.").

In addition, *Willy* did not limit a court's authority under Rule 11 to conduct that impeded the court's effort to preserve the status quo while it determined whether it had jurisdiction. Indeed, the Court expressly pointed out that "[n]one of the sanctionable conduct was related

to petitioner's initial effort to convince the District Court that it was without subject-matter jurisdiction." *Willy*, 503 U.S. at 133. *Willy* holds that a court's interest in maintaining orderly proceedings justifies punishment of misconduct that takes place during the case until the court, or a subsequent appellate court, determines that jurisdiction is absent, without regard to whether the misconduct is related to the court's determination of its jurisdiction. See *id.* at 139.

The same principle applies in the criminal contempt context. As the Court in *Willy* pointed out, courts sometimes mistakenly assume they have jurisdiction, and until the court (or an appellate court) concludes otherwise, there is no constitutional principle, or even sensible reason, that prevents the court in the interim from requiring compliance with its orders and punishing willful violations. See 503 U.S. at 139; see also *Szabo Food Serv., Inc.* v. *Canteen Corp.*, 823 F.2d 1073, 1078 (7th Cir. 1987) ("[A] court has jurisdiction to determine its jurisdiction and therefore may engage in all the usual judicial acts, even though it has no power to decide the case on the merits. It may supervise discovery, hold a trial, and order the payment of costs at the end."), cert. dismissed, 485 U.S. 901 (1988). Thus, while a court is considering its jurisdiction, or is under the mistaken understanding that it has jurisdiction, it has authority to issue orders necessary to proceed with the case, and it may punish those who willfully flout those orders, regardless of whether those orders are limited to preserving the status quo pending a determination of jurisdiction.

b. In any event, even if a court's authority is limited to maintaining the status quo pending determination of its jurisdiction, the order that petitioner violated was

related to the court's effort to do so. Broward brought the underlying suit as an in rem action. Pet. App. 2. In order to secure jurisdiction, the district court was required to issue a warrant and arrest the vessel. See *R.M.S. Titanic, Inc.* v. *Haver*, 171 F.3d 943, 964 (4th Cir.) ("Only if the court has exclusive custody and control over the property does it have jurisdiction over the property so as to be able to adjudicate rights in it that are binding."), cert. denied, 528 U.S. 825 (1999). The district court did so. Pet. App. 18. The parties then agreed, in a joint motion, that the vessel should be released from arrest in exchange for Seagrove's posting of a bond. *Id.* at 3, 18. In maritime cases, substituting a bond from the owner as the *res* and releasing the vessel to its owner is a well-established procedure that protects the court's ability to grant relief while giving the plaintiff security of known and fixed value and allowing the owner to make productive use of his ship while the action is pending. See, *e.g.*, *Ventura Packers, Inc.* v. *F/V Jeanine Kathleen*, 424 F.3d 852, 859 (9th Cir. 2005). Accordingly, the district court's orders effectuating the release of the vessel to Seagrove in exchange for the bond were part and parcel of maintaining the status quo.

3. Petitioner further contends (Pet. 11) that the court of appeals' decision in this case conflicts with this Court's decisions in *Ex parte Fisk*, 113 U.S. 713 (1885), and *In re Green*, 369 U.S. 689 (1962). That contention is without merit.

As the court of appeals noted (Pet. App. 9-10), *Fisk* and *Green* are distinguishable. In *Green*, a state court held Green in contempt for violating an ex parte injunction prohibiting a union from picketing. The Court held that it violated the Due Process Clause "to convict a person of a contempt of this nature without a hearing and

an opportunity to establish that the state court was acting in a field reserved exclusively by Congress for the federal agency." *Green*, 369 U.S. at 693. Here, there is no allegation that petitioner did not receive due process during his contempt proceedings.

In *Fisk*, the issue was not, as here, that the court lacked jurisdiction over the underlying case. Rather, this Court held that federal law precluded a federal court from issuing the order that the petitioner in that case was sanctioned for disobeying, namely an order to appear before a master for a deposition. *Fisk*, 113 U.S. at 724-726. See *United Mine Workers*, 330 U.S. at 291-292 (distinguishing *Fisk*). At bottom, petitioner bases his claim of a conflict on the assertion (Pet. 11) that, regardless of whether the district court had subject matter jurisdiction in the underlying action, the district court lacked authority to order the hull's release and to order petitioner not to interfere. But he offers no authority or argument in support of that contention, and that factbound contention does not warrant review in any event.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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